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Washington Supreme Court justices skeptical of school-funding prospects

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OLYMPIA – The Washington Supreme Court seemed skeptical Wednesday that lawmakers will come up with a plan that sends enough money to public schools to meet the constitutional duty they've arguably been shirking for decades.

So long that three of the four students named in a lawsuit over school funding have graduated and the fourth, Carter McCleary, is a high school senior who will graduate before the plan can be implemented.

So long that Superintendent of Public Instruction Randy Dorn said the court should order all of Washington's public schools closed if lawmakers don't come up with a solution.

An attorney for the state didn't get very far into his argument that lawmakers have a process in place to come up with a solution next year before the justices started peppering him with questions.

Asked Justice Susan Owens, what happens if the Legislature doesn't actually come up with a plan? "We're looking at 40 years of no action or no constructive action," she said.

When Deputy Solicitor General Alan Copsey countered that the Legislature has budgeted billions of dollars more for public schools, Owens responded the state also has more students in its schools and has experienced inflation.

Lawmakers set up a task force to study the biggest piece of a potential solution, proper compensation for teachers and other school employees, which is about 80 percent of school costs, Copsey said. That group will get a final report from its consultants in November.

But the Legislature had task forces in the past and didn't come up with a solution, Chief Justice Barbara Madsen said; why will this be any different? And if compensation is such a significant part of school costs, why save that for last?

Copsey likened the Legislature's effort to improve school funding to a marathon runner who is 15 miles into the race; while the run isn't over, it's not fair to say lawmakers have done nothing.

But Thomas Ahearne, attorney for the families who successfully sued the state in 2009 over inadequate funding for public schools, argued the state isn't running a marathon. It's riding a merry-go-round that keeps going in circles without getting anywhere. It has added money for school supplies, transportation and all-day kindergarten but not the full cost of those things.

"The state is telling the court the same thing it has for years," Ahearne said. "Trust us, we'll figure it out."

The court should tell the Legislature in advance what sanctions it will impose if it doesn't come up with a plan in the 2017 session, he said. The \$100,000 a day fine, which the court imposed in August 2015 as a sanction for not coming up with a plan, hasn't been effective, he added.

The Legislature hasn't even set that money aside in a separate account, even though Copsey said the Office of Financial Management is keeping track of the amount, which is now \$39.1 million.

That presents the court with a problem, Justice Sheryl Gordon McCloud said: "If sanctions are futile, we can't impose them." They're designed to force compliance with an order, not serve as punishment, she said.

The court took the arguments under advisement for a ruling in the coming weeks or months. But after the hearing, Dorn repeated a sanction he has said would force the Legislature's hand: Order the state's schools closed because they aren't meeting the constitutional requirements.

"Push 147 legislators and the governor to the edge of the cliff," he said, adding he doubted schools would stay closed for long because parents would force lawmakers to act.